

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Titus T. Bride,

Petitioner,

v.

Warden Susan McClintock,

Respondent.

**CV-13-136-TUC-JGZ (JR)**

**REPORT AND RECOMMENDATION**

Pending before the Court is Titus T. Bride's Petition for Writ of Habeas Corpus (Doc. 1) filed pursuant to 28 U.S.C. § 2241. Respondent filed a Return and Answer (Doc. 9). In accordance with the Rules of Practice of the United States District Court for the District of Arizona and 28 U.S.C. § 636(b)(1), this matter was referred to the Magistrate Judge for report and recommendation. As explained below, the Magistrate Judge recommends that the District Court, after an independent review of the record, dismiss the Petition with prejudice.

## I. BACKGROUND

### A. Conviction and Sentence

On April 14, 2006, in the United States District Court for the Western District of Washington, Bride was sentenced to a term of imprisonment of 228 months for one count of Conspiracy to Distribute Cocaine Base, two counts of Distribution of Cocaine Base, two counts of Distribution of Cocaine, and one count of Possession of a Firearm by a Convicted Felon. (*See* Declaration of Barbara Brown (“Brown Decl.”), ¶ 4, Att. 2.) Bride is incarcerated in the custody of the Federal Bureau of Prisons (“BOP”) and is housed at the Federal Correction Institution in Safford, Arizona (“FCI Safford”). (*Id.*, ¶ 4.) His projected release date is January 30, 2021. (*Id.*, ¶ 4, Att. 2.) Bride challenges his individualized BOP classification score.

### B. Inmate Classification

Program Statement 5100.08 (“PS 5100.08”) provides the policy and procedure regarding the BOP’s inmate classification system and is intended to “place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau’s mission to protect society.” PS 5100.08(1); Ch. 1, p. 1.<sup>1</sup> The classification system uses a point scoring system to analyze an inmate’s characteristics. *Id.*, Ch. 1, p. 2. Under the system, the points are tallied and the resulting security point score determines the security level of the facility in which the inmate will be held. For male prisoners, the point totals range from 0 to 24+, and the security levels range from minimum to high. *Id.*; Brown Decl. ¶ 5.

---

<sup>1</sup> PS 5100.08 is available at <http://www.bop.gov/policy/progstat/5100-008.pdf>

1 One of the factors considered in determining an inmate's security point score is  
2 the severity of the inmate's offense. This factor requires BOP to assign a number of  
3 points, ranging from 0 to 7, to reflect "the most severe documented instant offense  
4 behavior regardless of the conviction offense." *Id.*, Ch. 4, p. 7. Under PS 5100.08, any  
5 drug offender must be scored in the Greatest Severity category, and assigned 7 points, if  
6 the "offender was part of an organizational network and he or she organized or  
7 maintained ownership interest/profits from **large-scale** drug activity \*\*\*and\*\*\* The drug  
8 amount equals or exceeds" a specified amount for each type of drug. *Id.*, App. A, p. 1;  
9 Brown Decl. ¶¶ 8-9.

12 The security point score is not the only factor used to determine the appropriate  
13 security level for an inmate. PS 5100.08 also provides for the consideration of Public  
14 Safety Factors ("PSF"). "The application of a PSF overrides security point scores to  
15 ensure the appropriate security level is assigned to an inmate, based on his or her  
16 demonstrated current or prior behavior." *Id.*, Ch.1, p. 2; Ch. 2, p. 5 (PSF definition).

19 In this case, Bride's Presentence Report ("PSR") identified him as a leader and  
20 organizer of a drug distribution network. Brown Decl. ¶ 10, Att. 6. The PSR reflects that  
21 the network was accountable for the distribution of 2798.5 grams of cocaine and 876.75  
22 grams of cocaine base, and attributed the drug quantities to Bride as a leader and  
23 organizer. *Id.* Based on the drug quantities, which are categorized as "large scale" under  
24 PS 5100.08, and his leadership role, Bride's classification includes a Greatest Severity  
25 PSF. Bride contends that this determination is based on a misinterpretation of his PSR  
26 and the Greatest Severity Classification is improper under PS 5100.08.

## II. DISCUSSION

Bride raises one claim in his Petition, which he describes as follows: “Petitioner is challenging the failure of the BOP to properly interpret and apply the ‘Definition of Roles Involved In Drug Offenses’ under Program Statement 5100.08 as it relates to classifying the severity of an inmate[‘]s current status.” *Memorandum of Law In Support of Petition For Writ of Habeas Corpus* (“*Petitioner’s Memorandum*”), p. 1. Bride argues that his Public Safety Factor classification of “Greatest Severity” is not supported by the relevant facts and, therefore, the BOP should be ordered to remove the classification. *Id.*, pp. 4-8.

### B. Jurisdiction

Respondent contends that Bride’s Petition must be denied and the case be dismissed because the Court does not have subject matter jurisdiction to review the BOP’s classification decision. The Court agrees.

A District Court has jurisdiction to consider a petition under 28 U.S.C. § 2241 if the petitioner is challenging the legality of the “manner, location, or conditions of the execution of a sentence of a sentence.” *Hernandez v. Campbell*, 204 F.3d 861, 864 (9<sup>th</sup> Cir. 2000). However, habeas jurisdiction is absent where a successful challenge to the manner, location or conditions would not accelerate the petitioner’s release. *Ramirez v. Galaza*, 334 F.3d 850, 859 (9<sup>th</sup> Cir. 2003). Claims that merely challenge a petitioner’s classification by the BOP without potentially shortening the petitioner’s sentence are not cognizable in a federal habeas petition. *See Estrada v. Chavez*, CV 08-1358-PHX-NVW (LOA), 2009 WL 1383328 at \*5 (D.Ariz. May 15, 2009) (holding a prisoner’s challenge to changes to the PS 5100.08 scoring system did not affect the execution of his sentence

1 and, therefore, the court lacked habeas jurisdiction under § 2241); *see also Franklin v.*  
2 *Gipson*, CV 12-7411-R-PLA, 2013 WL 1339545 at \*2 (C.D.Cal. Feb. 19, 2013); *Lerma*  
3 *v. Gutierrez*, CV 11-07996-PSG-VBK, 2012 WL 1320145 (C.D.Cal Mar. 7, 2012).

4       Additionally, in *Reeb v. Thomas*, 636 F.3d 1224 (9<sup>th</sup> Cir. 2011), the Ninth Circuit  
5 held that 18 U.S.C. § 3625 precludes judicial review of “any determination” by BOP  
6 made pursuant to 18 U.S.C. §§ 3621-3624. *Id.* at 1227. Habeas challenges to such  
7 determinations are precluded because “[t]o find that prisoners can bring habeas petitions  
8 under 28 U.S.C. § 2241 to challenge the BOP’s discretionary determinations made  
9 pursuant to 18 U.S.C. § 3621 would be inconsistent with the language of 18 U.S.C. §  
10 3625.” *Id.* Although *Reeb* involved a challenge to a BOP determination that the  
11 petitioner could not participate in a residential drug abuse program as opposed to the  
12 security classification at issue here, the difference is immaterial because both  
13 determinations are made pursuant to § 3621. *See* PS 5100.08(1) (“The Bureau’s  
14 classification, designation and redesignation procedures are consistent with the statutory  
15 authority contained in 18 U.S.C. § 3621(b).”) *Reeb* also reiterated that “[a] habeas claim  
16 cannot be sustained based solely upon the BOP’s purported violation of its own program  
17 statement because noncompliance with a BOP program statement is not a violation of  
18 federal law.” 636 F.3d at 1227.

19       In sum, Petitioner does not present any grounds upon which the Court can grant  
20 relief under 28 U.S.C. § 2241. He does not challenge the duration of his sentence, but  
21 rather, his individualized BOP classification score. As such, the Court does not have  
22 jurisdiction to address his claim.

